

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52

Comments of
the American Association of Independent Music

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October 11, 2010

The American Association of Independent Music (“A2IM”) thanks the Federal Communications Commission (“FCC”) for this opportunity to comment on the latest *Notice of Proposed Rulemaking in the Matter of Preserving the Open Internet (NPRM)*.

A2IM is a non-profit organization representing a broad coalition of independently owned music labels from a sector that comprises more than 30 percent of the music industry’s U.S. recorded music sales market, almost 40 percent of digital sales, and well over 80 percent of all music released by music labels in the U.S. A2IM’s music community includes music companies of all sizes throughout United States, from Hawaii to Florida and all across our country, representing musical genres as diverse as our membership.

This year, independently owned music labels scored a total of 43 Grammy awards, of the 109 awarded, in the Pop, Rock, Alternative, Country, New Age, Jazz, Gospel, Tropical Latin, Tejano, Norteno, Bando, Americana, Bluegrass, Blues, Folk, Hawaiian, Native American, Zydeco/Cajun, World, Spoken Word, Comedy, Surround Sound and Classical genres including the Album of the Year. Unfortunately economic reward has not always followed critical success due to barriers to entry for independents in both promotion and commerce. A2IM members share the core conviction that the independent music community plays a vital role in the continued advancement of cultural diversity and innovation in music at home and abroad, but we need your help.

Over the course of the past decade dramatic shifts in technology have impacted nearly every aspect of the music industry, from the recording and distribution of sound recordings to the cultivating of audiences for sound recordings via new distribution

mediums. Many of these changes have been disruptive to traditional business models, but there have also been new opportunities fostered by technological developments.

Independent labels have keenly felt these dual forces as we've sought to adapt to an increasingly digital, networked world.

Of all the technological developments in recent history, the Internet represents the most potent platform for entrepreneurship and expression our community has witnessed. Yet it also has produced tremendous uncertainty among those who earn their living from their copyrights — from artists to labels to songwriters to publishers to everyone in between — in part due to the evolving nature of internet promotion and commerce. Again, the independent community has experienced all sides of the phenomenon. Yet despite the many unresolved questions surrounding the protection of intellectual property online, we remain optimistic that open Internet structures are our best means through which to do business, reach listeners and innovate in the digital realm.

The adoption of net neutrality rules would ensure that independents would continue to have access to this crucial marketplace. As the FCC once again examines the issues surrounding the open Internet, we encourage it to consider closely how these structures aid the independent music community in contributing to a robust marketplace of globally desirable content — something that was much more difficult in the pre-Internet era.

Independent labels would not fare well under any regime that allows Internet traffic to be prioritized based on business arrangements between ISPs and the largest corporate

entities, as our sector is not capable of competing economically. Codified principles to preserve the Internet as a viable, robust and open marketplace, on the other hand, would create the necessary assurances that independent music and commerce can flourish. We understand well that prioritization of traffic occurs in certain instances to maintain an overall consistency of service. However, when the blocking, delaying or degrading of lawful content is done to create a marketplace advantage for one player over another, it undermines the very aspects of the Internet that make it such a powerful platform for culture and commerce. Likewise, the selling of priority access — regardless of what it is called — would result in a severely altered landscape in which independent labels may find themselves at a persistent, if not permanent, disadvantage.

Such disadvantages are familiar to our sector. Due to the inequities of a historic music marketplace structured on a hierarchical system of gatekeepers, independent labels have over the years struggled to reach audiences even when there is clear demand for our product. Traditional broadcast media such as commercial terrestrial radio has been notoriously reluctant to air independent content, due in large part to a relaxed regulatory environment that allowed for widespread consolidation among broadcast station owners and the subsequent loss of local programming autonomy. Similarly, independents could not afford the tolls required to get access and compete in the physical retail environment due to scarce shelf space. Additionally, it has been extraordinarily difficult for independent label owners to develop productive relationships with large radio broadcast station groups, leaving little room for independent releases and further frustrating efforts to secure retail space to create sales equal to those of non-independent label artists.

By contrast, the Internet has allowed our sector to compete on a more level playing field and take fuller advantage of new means of reaching audiences and doing business, via Internet based services like Pandora or Slacker, or the broader commerce opportunities presented by digital retailers such as eMusic, iTunes, Amazon and others. Additionally, we have developed Direct-To-Consumer relationships with our fans for both promotion of our music and sales. The ability to develop direct relationships with our customers by leveraging Internet-engendered technology has been a phenomenal development in our ability to bring more music to more people.

In this regard, we are encouraged that the FCC recognizes the fundamental importance of preserving a dynamic and competitive commercial environment where small companies can set goals and achieve them without having to ask permission from Internet service providers. Without the benefit of an open Internet, we may very well end up with another set of gatekeepers that determine who gets to play and at what cost.

The recent NPRM seeks our comment on two new net neutrality exceptions that have been proposed by Google and Verizon. The first is the relationship between open Internet protections and services that are provided over the same last-mile facilities as broadband Internet access service (commonly called “managed” or “specialized” services). The second is the application of new open Internet rules for mobile wireless Internet access services. Both have unique characteristics related to technology, associated application and device markets, and consumer usage. We fear that the creation of these two

exceptions from net neutrality could cause entrepreneurs and innovators, among which independent music labels must be counted, and the technology services that provide distribution services to our music label members to be foreclosed from competitive internet access, either by being priced out of the most desirable delivery mechanisms or by being squeezed out due to a drain on capacity in a “public pipe.” Independent labels must have the ability to participate in a legitimate digital music marketplace as it continues its evolution. Yet the combination of these two net neutrality exceptions could result in new barriers and an anticompetitive situation for our music label members in terms of reaching consumers for the promotion of both music and commerce. Furthermore, the marketplace itself would be injured by not being able to benefit from the innovations that will ultimately help it reach its full commercial and cultural potential, with vital and ongoing contributions from our community of creators and innovators.

Our community recognizes the need to encourage Internet investment but the furnishing of specialized services over separate Internet lanes could result in new monetary access barriers to entry similar to those historic entry barriers currently experienced by independent music labels, as previously referenced above, leaving our independent music community with second-class access to consumers. At the same time, we fear that there also may be a discontinuation of investment in technology and capacity in the so called “public Internet” by broadband providers. Our members’ ability to promote and sell their artists’ craft, would be compromised and could potentially drive consumers towards the

specialized service portion of the Internet, leaving our community with limited or no direct consumer access.

Related to the proposed mobile wireless exception included in the NPRM, our concerns are similar. There is, of course, the cost of entry for content creators as well as a question of sufficient access to a range of music applications to allow for consumer choice. As surveys show that more and more marketing and commerce will be moving to the mobile space, we frankly do not understand why there should be a distinction made between broadband and mobile providers of Internet access.

We continue to be pleased that the FCC's draft rules for preserving an open Internet apply only to **lawful** content, applications and services. This distinction is important to maintain, as it has become increasingly clear that the music sector must be free to pursue any and all available means of combating the unlawful sharing of copyrighted content. A2IM respects the distinction between protecting intellectual property and maintaining an open and competitive marketplace, and we are encouraged that the Commission's draft rules reflect a similar understanding.

Still, we must reiterate the need for a proactive approach to intellectual property protection, even as rules that would preserve the many benefits of the Internet — commercial, cultural and otherwise — are crafted. The U.S. government has and should have a role to play in maintaining a functional commercial environment online, and this means taking seriously the problem of piracy. A2IM member labels simply do not have

the means to engage in copyright enforcement on the Internet. The time and capital investment required for our community of like-minded but proudly independent small business people to monitor the web for infringement and take subsequent legal action simply does not exist. It would be tremendously beneficial for those whose livelihood depends on the ability to exploit copyrights in a free market if we had a government partner helping to advance an enforceable regime for the protection of intellectual property online.

We recognize that the FCC may not be the proper agency with which to task intellectual property protection. The announcement earlier this year of a Department of Justice-based Task Force on Intellectual Property and the subsequent Administration and Congressional announcements of support are welcome steps in coordinating government efforts to deal with a pressing problem that compromises America's economic and cultural standing. These efforts, combined with strong but necessarily flexible net neutrality provisions, will help ensure that entrepreneurs and innovators can continue to make the Internet a vibrant domain for creativity and commerce.

Our independent music community is struggling and has been severely damaged as a result of online piracy. Yet we respectfully request that our government partners reject these two new exceptions to the open Internet and continue to advocate that the core principles of net neutrality continue to be applied. We believe that thoughtful and deliberate government action will help protect the interests of small businesses within the scope of a level playing field for **legal** activity on the Internet, which would allow all

users to compete on an equal technological footing and give the independent music community the means to explore exciting and potentially rewarding platforms for music promotion and commerce. A level playing field, however, is not an illegal one, and we also support government efforts to find ways to more effectively protect intellectual property online.

The open Internet is a “license to innovate” that provides the oxygen of the music ecosystem — without it, A2IM and its culturally and economically significant members would not be able to contribute such a diverse array of music to listeners hungry for content outside of the narrow confines of traditional broadcast media. This would be a net loss not just to America, but also the world, where the desire to experience our culture and creative expression is ever-present and growing. In addition, as we have stated previously, the small business people we represent would also be able to expand the overall economy due to the economic multiplier effect, as music helps promote games, films, advertisements and many forms of technology, both here in the U.S. and abroad.

We would like to thank the FCC for the opportunity to comment on such a historic proceeding, and support its efforts to ensure that the Internet remains a dynamic platform for all members of society, including independent creators and their steadfast partners in business.

Respectfully submitted by the American Association of Independent Music